

## **Information for Pioneers & CCGs: Indemnity insurance & independent midwives**

August 2017

### **This document has been written at the request of the Maternity Pioneers and is for information only**

The current situation with regard to indemnity insurance for independent midwives (IMs); particularly to cover intra-partum care is a complex issue and one that has the potential to affect choice with regard to place of birth and continuity of care for women.

CCGs have been approached and asked to support a number of different scenarios to facilitate a woman to continue to use her independent midwife for birth. Although the numbers of these requests are small, it is an important area and this background note provides some context and suggestions for CCGs to consider in this scenario.

### **Background**

The need for independent midwives to have indemnity insurance became law in July 2014. This decision was driven partly by the need to comply with the new EU Cross Border Healthcare Directive 2012, which stated that all regulated healthcare professionals, including independent midwives would require indemnity insurance to continue to practise; this matched the recommendations of a review commissioned by the UK government. (Scott 2010).

Independent Midwives UK (IMUK) then provided indemnity insurance for independent midwives from mid- 2014 to mid-2015. However concerns were raised by the NMC which led to IMUK changing its insurance scheme. The oversight of indemnity insurance for nurses and midwives became the responsibility of the Nursing & Midwifery Council as part of the EU directive and the need for this insurance is contained in The Code (2014).

The NMC again investigated the appropriateness of the professional indemnity arrangement relied upon by independent midwives who were members of IMUK and deciding that the IMUK scheme was not appropriate because it was unable to call upon sufficient financial resources to meet the costs of a successful claim for a payment of damages. These could include rare cases of catastrophic injury, such as cerebral palsy. Therefore mothers and babies who suffered injury through the negligence of an attending midwife would not be properly compensated.

The result of this decision is that there are currently approximately 85 independent midwives who need to look for insurance from an alternative source. IMUK are currently challenging the decision of the NMC.

The NMC website states that: A midwife involved in any professional capacity in attending a woman in childbirth must have an appropriate indemnity arrangement which covers the full nature and extent of the associated risks. There is only one level of involvement as a midwife in childbirth itself, as this is a protected function under Article 45 of the Nursing and Midwifery Order 2001. This means that it is an offence for any person who is not a registered midwife or a registered medical practitioner to attend a woman in childbirth, except in an emergency or as part of approved training for those professions. If we find out that a midwife is practising without an appropriate indemnity arrangement, we will remove them from the register. Removal from the register means that they will no longer be able to practise as a midwife. Following their decision, the NMC produced an [information sheet for women](#) on the decision.

## **Options available going forwards**

These insurance challenges are being addressed in various ways across the country:

### **1. Bank contracts for IMs with an NHS provider, covered by CNST**

The use of bank contracts is supported by the RCM (2017). In this option the NHS provider agrees a bank contract with the IM, thus allowing them to become temporary workers of the NHS organisation and so entitled to cover from the NHS vicarious liability insurance. The recruitment process and orientation and training are the same as any applicant for a post within that unit.

Chelsea & Westminster and Airedale NHS Foundation Trust adopted this approach in early 2017. The indemnity provided by the Bank Contract is enacted as soon as the IM contacts the On Call Midwifery Manager to confirm that her client is in established labour at home (name given) and that she is in attendance as the midwife, this triggers the Bank Contract payment period.

This indemnity insurance covers the IM to provide intrapartum care to women living in the trusts supporting area either at home or in the Birth Centre at Chelsea and Westminster Hospital and at home or in the labour ward at Airedale. **More details on these models can be provided.**

### **2. Formal application for CCG approval of an individual funding request for maternity care, for the IM through One to One Midwifery Services**

In this situation the CCG is approached by a provider (the requests we are aware of have been through One to One), and asked to agree an IFR for the woman's intrapartum care which will be delivered by the IM, as an employee of the provider (one-two-one). This can be a challenging process for a CCG if the provider is not already commissioned by them for maternity care.

The CCG must then take a local commissioning decision as to whether to commission the provider in this circumstance, based on an adequate level of assurance of safety and clinical governance, as in any commissioning situation. We are aware of some CCGs for example who have utilised the NHS short form Standard Contract to commission in this situation.

### **3. NHS care is provided by a locally commissioned provider**

A woman approaching a CCG can be offered the NHS services available in that locality. However, it should be noted that it is not an option for the IM to attend the birth in a non-professional capacity. The NMC factsheet for women states that: A registered midwife can only attend a woman during a birth if she has appropriate indemnity cover. The midwife cannot avoid this legal requirement by attending the birth in a 'non-midwife' capacity. This is because their professional and legal obligations remain the same in these circumstances. The only exception to this is when a midwife attends a birth in a personal capacity to support a family member or close friend for whom they have not previously provided midwifery services.

### **4. The IM is enabled to keep practising privately through UK Birth Centres**

The NMC decision regarding the removal of the indemnity scheme provided by Independent Midwives UK states that it is possible for Independent Midwives to apply for one-off indemnity cover throughout UK Birth Centres. With this arrangement in place the midwife who has been providing a women's antenatal care would be able to continue to care for her during the birth of her baby and into the postnatal period. This arrangement would remain outside NHS provision.

## References

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